

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

HARVEY DWAYNE HICKS	§	
v.	§	CIVIL ACTION NO. 6:06cv386
DIRECTOR, TDCJ-CID	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Harvey Dwayne Hicks, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his conviction. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Hicks was convicted on May 23, 2002, of evading arrest, receiving a sentence of 10 years in prison. He did not take a direct appeal, but filed a state habeas corpus application on January 23, 2006, which was denied by the Texas Court of Criminal Appeals on April 19, 2006.

After review of the pleadings, the Magistrate Judge issued a Report on September 5, 2006, recommending that the petition be dismissed because of the expiration of the statute of limitations. The Magistrate Judge also recommended that Hicks be denied a certificate of appealability. Hicks received a copy of the Magistrate Judge's Report on September 7, 2006, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Magistrate Judge's Report is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus is DISMISSED with prejudice. It is further

ORDERED that the Petitioner Harvey Dwayne Hicks is denied a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

SIGNED this 19th day of October, 2006.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE